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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

STAN BARRY NEWTON,

Defendant and Appellant.

H032219

(Santa Clara County

Super. Ct. No. CC642535)

I. STATEMENT OF THE CASE

Defendant Stan Barry Newton pleaded no contest to reckless evasion of a peace officer and driving with a blood alcohol level of .08 percent or more and admitted that (1) his blood alcohol level was, or exceeded, .15 percent, (2) he drove 20 miles per hour (MPH) over the posted speed limit on a street and 30 MPH over the posted limit on a freeway, and (3) he had two prior strike convictions.¹ (Veh. Code, §§ 2800.2, subd. (a), 23103, 23152, subd. (b), 23578, & 23582; Pen. Code, §§ 667, subds. (b)-(i) & 1170.12.) Newton entered his plea with the understanding that a charge of drunk driving would be dismissed and he could request the dismissal of the strike convictions under section 1385 and *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*) and thereby avoid the otherwise mandatory three-strikes sentence of 25 years to life. At sentencing,

¹ All further unspecified statutory references are to the Penal Code.

the court declined to dismiss one or both of the strike convictions and imposed a sentence of 25 years to life. On appeal from the judgment (Cal. Rules of Court, rule 8.304(b)(4)(B)), Newton claims the court abused its discretion in refusing to dismiss at least one of his strikes.

We find no abuse of discretion and affirm the judgment.²

II. UNDERLYING OFFENSES

The probation report reveals that on July 8, 2006, Newton was driving his car, when a Santa Clara County Deputy Sheriff observed him cross over double solid yellow lines into oncoming traffic. The deputy attempted a traffic stop. Despite the deputy's flashing lights and siren, Newton accelerated over the speed limit, ran a red light at the next intersection, and made a U-turn at the next one. He continued accelerating to 75 MPH, made a right turn at a red light at the next intersection, and merged onto Highway 280. There he accelerated to 120 mph. The deputy followed him but a short time later terminated the pursuit. As he exited the freeway, the deputy noticed gravel on the road and a tree limb in the middle of the exit lane. A witness flagged him down and pointed to Newton's car, which was in an intersection. The sides of the car had sustained major damage, and the rear window was shattered. Newton was trying to close the driver's side door, but when it would not close, he drove away with the door open. The deputy followed and ultimately arrested him. At that time, his blood alcohol level was .20 percent.

Newton told the probation officer that he had had four "Jack and Cokes" at Woodham's Lounge, and, while on his way to another bar, he saw the deputy's flashing

² Newton also filed a petition for a writ of habeas corpus (H033761, *In re Newton*), and we ordered that it be considered with the appeal. In the petition, Newton alleges that defense counsel rendered ineffective assistance in advising him to admit the two strike allegations.

In a separate opinion, we issue an order to show cause returnable before the superior court. (§ 1508, subd. (b).)

lights and panicked. He sped off, drunk and scared. He could not recall what happened after he exited the freeway.

III. PRIOR CONVICTIONS

On June 30, 1988, a San Jose Police Officer arrived at the scene of a major injury accident on Capital Expressway and observed Newton's smashed car near a signal pole. Three passengers were outside, and one was still inside. Paramedics were attending to them. Several beer cans were inside the car. A witness reported that the car had been speeding on the expressway, and the driver lost control and hit the signal pole. All four passengers suffered head injuries, and one—Richard Frable—died. Newton had been driving. A test revealed a blood alcohol level of .12 percent. Newton was convicted of vehicular manslaughter, driving with a blood alcohol content over the legal limit, committing an unlawful act or omission, and causing bodily. He was placed on probation. However, probation was later revoked, and he was sentenced to two years in prison.

IV. THE *ROMERO*³ HEARING

In his brief requesting dismissal of his strikes, Newton cited *People v. Williams* (1998) 17 Cal.4th 148 (*Williams*) and correctly noted that the court had discretion to dismiss one or more strikes in furtherance of justice if it found that he was “whol[ly] or . . . part[ly]” outside the scheme of the “Three Strikes” law. (*Id.* at p. 161, italics added.)

Concerning his prior record, Newton acknowledged that he had a 1977 conviction for possession of alcohol by a minor and 1985 convictions for driving under the influence and with a suspended license. After his 1988 convictions for vehicular manslaughter and driving under the influence and causing injury, he promised not to drink again if given probation. He also had a 1989 conviction for unemployment insurance fraud and was

³ In *Romero, supra*, 13 Cal.4th 497, the court held that a trial court has discretion under section 1385 to dismiss a prior strike conviction in furtherance of justice. (*Id.* at pp. 504, 529-530.)

required to pay restitution as a condition of probation. In 1990, he was convicted of forgery and attempted petty theft. His probation was revoked in 1993 and again in 1994. The latter revocation was due to his failure to report to his probation officer, perform community service, pay restitution, and attend a drunk-driving program. At the time of revocation, Newton said he could not afford to pay restitution or attend a program because of a divorce and bankruptcy.

On the positive side, Newton noted that he has been employed since 1987 and can retire with benefits in 2014. He also submitted numerous letters of support from customers, coworkers, and supervisors attesting to his helpfulness, amicability, generosity, competence, reliability, timeliness, and trustworthiness.

Newton argued that he was “outside the three-strikes law, *at least in part*” because (1) his two strike convictions were based on the same act; (2) his criminal record did not involve intentionally violent conduct or reveal a career criminal with an “ ‘uninterrupted series of nonviolent felonies and misdemeanors over a lengthy period’ ”; (3) before the current offenses, he had had no felony or alcohol-related convictions for 18 years, and his last conviction was in 1990; (4) probation was revoked for failing to comply with conditions and not unlawful conduct; (5) he had been trying to control the alcoholism by attending Alcoholics Anonymous (AA); and (6) he had been steadily employed for many years. (*Italics added.*)

In support of his request, Newton cited a footnote in *People v. Benson* (1998) 18 Cal.4th 24 (*Benson*). In that case, the California Supreme Court held that all qualifying prior convictions constitute strikes, even if the punishment for one or more had been stayed under section 654. (*Benson, supra*, 18 Cal.4th at pp. 27-28.) In the footnote, the court opined, “Because the proper exercise of a trial court’s discretion under section 1385 necessarily relates to the circumstances of a particular defendant’s current and past criminal conduct, we need not and do not determine whether there are some circumstances in which two prior felony convictions are so closely connected—for

example, when multiple convictions arise out of a single act by the defendant as distinguished from multiple acts committed in an indivisible course of conduct—that a trial court would abuse its discretion under section 1385 if it failed to strike one of the priors.” (*Id.* at p. 36, fn. 8.)

Given the mitigating circumstances, the *Benson* footnote, and the fact that Newton’s two strikes arose from the same accident, Newton argued that he was outside, or at least partially outside, the spirit of the Three Strikes law and, therefore, the court should dismiss at least one of his strikes.

In opposing the request, the prosecutor acknowledged that under *Williams*, the court had discretion to dismiss one or more strikes if it found that the Newton was outside the spirit of the Three Strikes sentencing scheme “ ‘*in whole or in part.*’ ” (Italics added.) However, the prosecutor argued that under the circumstances, Newton fell within the spirit of the scheme. The prosecutor noted Newton’s criminal record beginning in 1976, when he was 18 years old, and comprising 12 convictions, four for felonies, six involving alcohol, and one resulting in a death. The record also reflected a history of lying and fraud, which included the broken promise he made at sentencing in 1988 on his strike convictions not to drink again; and the string of traffic offenses he committed in connection with his current offenses. The prosecutor argued that these circumstances would render “any dismissal of a strike, let alone two such dismissals, for [Newton] an abuse of discretion.”

Concerning the possible dismissal of a strike, the probation officer noted in her report that the current offense was not serious or violent. However, she noted that Newton was driving with a high blood alcohol content and posed a great threat of serious and deadly consequences. And although the strike convictions were 18 years old and his intervening criminal history was “minimal,” “the similarity between the present offense and [Newton’s] strike prior convictions remain. The defendant states he is ‘fortunate’ he did not hit anyone, but fails to acknowledge his repetitious behavior. Also noteworthy is

the defendant's poor prior performance on probation, and his self-admitted 'failure to report', which resulted in a probation violation and a prison sentence being imposed." In sum, the probation officer was concerned about the similarities between [Newton's] strike prior convictions and the present offenses. "The defendant states he was 'scared straight' after his vehicular manslaughter offense, however, he has again placed himself in the same situation. Even after suffering severe physical injury and the loss of a friend, he again chose to drink and drive. This decision only exemplifies the true threat the defendant is to society and his potential for further criminal behavior." Under the circumstances, the probation officer did not recommend that the court dismiss any strikes; rather she recommended that the court sentence Newton in accordance with the Three Strikes law to a term of 25 years to life.

At the hearing, the court stated that it had read the probation report and the parties' pleadings.

Defense counsel then reiterated the arguments in Newton's brief to the effect that Newton was not within the spirit of the Three Strikes law, in that he is not a "revolving door" criminal. He then presented witnesses concerning Newton's background, character, and prospects, including a former employer, manager, coworker, and police officer, who knew and had worked with Newton. They praised his work, complimented his personality, offered to rehire him, and opined that he did not pose a threat and did not deserve a long prison sentence.

Newton apologized for his conduct and the risk of harm he posed that night, saying he had been under pressure and was not "in his right mind." He said he was "finished with alcohol" and could "honestly say it's never going to happen again." He said that he had suffered through the loss of his mother and grandfather, had a 25-year-old son, and was trying to be a better person. He also had graduated from a "Choices" program was attending AA meetings.

Defense counsel closed by noting that one of the surviving passengers of defendant's fatal car accident had said that the decedent had been " 'looking for death and decided to take them all out with him.' " ⁴

The prosecutor emphasized the recklessness of Newton's current conduct and the substantial risk of danger and injury it posed. He quoted from the letter Newton had written for sentencing on his manslaughter conviction, in which Newton said, " 'I will never drink again. I'll live with this for the rest of my life. It's been very hard on me. In addition I've had two family members die. It's very difficult for me to deal with this. I will never drink and drive, nor will I ever have a drink period.' "

Concerning the prior convictions, the prosecutor noted that the surviving passenger could not say that the decedent had grabbed the steering wheel and could not say exactly what had happened. The prosecutor noted that in the prior incident, Newton and his friends had been to a number of bars, and in the current offense, Newton was looking for a second bar to go to. The prosecutor further argued that notwithstanding the deadly consequences of his prior conduct and promise to the sentencing court, Newton drank and drove again, and the pressures he cited to explain his lapse were experienced by many, who do not resort to drinking and driving as a way to cope.

The probation officer testified that Newton had listed his brother's residence as the place where he would go upon his release, but this concerned the officer, who asserted

⁴ Defense counsel submitted the probation report prepared for sentencing on Newton's manslaughter conviction. The report summarized the statement of the surviving passenger, who said that "the deceased person contributed to the accident by how he was behaving while in the automobile. He cannot say that he saw [the decedent] actually grab the steering wheel from [Newton], but he does describe him as being extremely drunk and extremely out of control, angry and acting in a very wild manner." The surviving passenger "regrets allowing [the decedent] to sit in the front seat with the driver because he would not sit still and was so out of control. He also said that [the decedent] had made comments to him and had told his wife that he had bought insurance that would benefit her if he should die. [The surviving passenger]'s opinion is that [the decedent] was 'looking for death' and had decided to take them all with him.' "

that it demonstrated Newton's lack of insight because Newton's brother was the person Newton had been drinking with the night of his current offenses.

Defense counsel responded that Newton's brother was very supportive of Newton and would continue to be.

The court acknowledged the support that Newton's friends and coworkers had expressed and conceded that Newton appeared to be a "fine man," who is "fortunate to have such supportive friends and co-workers." However, the court opined that the "case isn't about whether the defendant is a good person or bad person. There is [*sic*] certain criteria that the court needs to look at in deciding the *Romero* motion."

The court further acknowledged that Newton's current offense was neither serious nor violent and that both of his strikes arose from a single incident that was relatively old. On the other hand, the court observed that Newton's current conduct was "strikingly similar" to his prior conduct, in that "both times the defendant drank and drove in a wanton and reckless manner." The court further noted that at sentencing then and now, Newton pleaded for mercy, said he was grief stricken due to the deaths of his friend and relatives, and promised not to drink again.

Noting that Newton had already caused the death of one person and serious injuries to others, the court opined that Newton had not learned from that experience and as a result posed, and still poses, a menace to society. The court continued, "In order to grant the *Romero* motion, I would have to find that the defendant can be deemed to be outside the spirit of the three-strikes sentencing scheme. And, unfortunately, this is exactly the type of situation that the three-strikes sentencing scheme was meant to address and to protect the community. [¶] The defendant's *Romero* motion is, therefore, denied."

V. DENIAL OF NEWTON'S *ROMERO* REQUEST

On appeal, Newton contends that the court abused its discretion in declining to dismiss one or both of his strikes.

Applicable Principles

In *Romero, supra*, 13 Cal.4th 497, the Supreme Court explained that the discretion to dismiss a strike in furtherance of justice is “limited.” (*Id.* at p. 530.) The trial court must consider both the constitutional rights of the defendant and the interests of society. (*Ibid.*) It may not dismiss a strike to accommodate judicial convenience, relieve court congestion, or respond to a guilty plea. (*Id.* at p. 531.) Nor may a court dismiss a strike because it disagrees with the harsh effects the Three Strikes law would have on the defendant and without first considering the defendant’s background, criminal history, and the nature of his present offense. (*Ibid.*)

In *Williams, supra*, 17 Cal.4th 148, the court reiterated these guidelines, and, as the parties correctly noted below, stated that the trial court “must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme’s spirit, *in whole or in part*, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.” (*Id.* at p. 161, italics added.)

In *Williams*, the defendant was convicted of driving under the influence of drugs, and at sentencing the trial court dismissed two strikes for attempted robbery and rape because (1) they were 13 years old and (2) the defendant had not committed any violent offenses during the interim. (*Williams, supra*, 17 Cal.4th at pp. 152, 156.) The Supreme Court found an abuse of discretion. Given the defendant’s 19-year criminal history, which included convictions for attempted robbery, rape, and spousal battery, unlawful possession of a firearm, and driving under the influence; and given his personal background, character, and prospects, which were not positive, the court concluded that he could not be deemed outside the spirit of the Three Strikes law “in any part” (*Id.* at p. 163.)

In *People v. Garcia* (1999) 20 Cal.4th 490 (*Garcia*), the Supreme Court held that a trial court has discretion to dismiss strike allegations on a count-by-count basis. (*Id.* at pp. 492-493.) The court explained that in exercising its discretion, the trial court must consider the nature and circumstances of the current felonies, which, in many cases, may differ considerably. Accordingly, a court “might therefore be justified in striking prior conviction allegations with respect to a relatively minor current felony, while considering those prior convictions with respect to a serious or violent current felony.” (*Id.* at p. 499.)

In *Garcia*, the defendant had five strike convictions and was convicted of two counts of burglary. The trial court struck the strike allegations as to one count and imposed a term of 30 years to life, rather than 58 years to life. The Supreme Court found no abuse of discretion. The court noted that despite the dismissal, the sentence was not lenient and remained consistent with the purpose of the Three Strikes law. The court also observed that “defendant’s prior convictions all arose from a single period of aberrant behavior for which he served a single prison term. Defendant cooperated with police, his crimes were related to drug addiction, and his criminal history does not include any actual violence. Cumulatively, all these circumstances indicate that ‘defendant may be deemed outside the [Three Strikes] scheme’s spirit,’ *at least ‘in part,’* and that the trial court acted within the limits of its . . . discretion.” (*Id.* at p. 503, quoting *Williams, supra*, 17 Cal.4th at p. 161, italics added.)

On appeal, we do not review a *Romero* request de novo. Rather, we review the court’s decisions for abuse of discretion under a deferential standard. (*Williams, supra*, 17 Cal.4th at p. 162.) We presume the trial court acted to achieve legitimate sentencing objectives (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977-978), and, therefore, the defendant bears the burden to show that the court’s ruling “ ‘falls outside the bounds of reason’ under the applicable law and the relevant facts” (*Williams, supra*, 17 Cal.4th at p. 162), and is “so irrational or arbitrary that no reasonable person could

agree with it.” (*People v. Carmony* (2004) 33 Cal.4th 367, 377; *People v. Jordan* (1986) 42 Cal.3d 308, 316; *People v. Barrera* (1999) 70 Cal.App.4th 541, 554.)

Abuse of Discretion

Newton first contends that the trial court misunderstood the scope of its discretion because it applied an erroneously restrictive standard in declining to dismiss any of his strikes. Quoting the court’s comment—i.e., that to grant relief, it would have to find that he was outside the spirit of the Three Strikes law—Newton argues that the court mistakenly believed that “no *Romero* relief could be granted absent a conclusion that [he] was *entirely* outside the Three Strikes sentencing scheme.” (Newton’s italics.) As noted, however, a court can grant relief if it finds that the defendant is outside the spirit of the law “in whole *or in part*.” (*Williams, supra*, 17 Cal.4th at p. 161, italics added; accord, *Garcia, supra*, 20 Cal.4th at p. 503.)

Where a court is unaware of or misunderstands the scope of its discretion, its ruling is not the exercise of properly “ ‘informed discretion’ ” and is akin to a sentence based on misinformation regarding a material aspect of a defendant’s record. (*People v. Belmontes* (1983) 34 Cal.3d 335, 348, fn. 8; see *People v. Ruiz* (1975) 14 Cal.3d 163, 168.) In such circumstances, the trial court’s ruling is an abuse of discretion, and reviewing courts frequently remand the matter for the trial court to make an informed decision and exercise of discretion. (*People v. Carmony, supra*, 33 Cal.4th at p. 376; see *People v. Belmontes, supra*, 34 Cal.3d at p. 348, fn. 8; e.g., *People v. Deloza* (1998) 18 Cal.4th 585, 599-600 [misunderstood scope of discretion].)

To make out his claim, Newton plucks the court’s statement from its context, narrows it by inserting the word “entirely,” and then presumes that the more restrictive meaning reflects the court’s understanding. However, the court did not say “entirely.” And there is no evidence it intended its statement to have such a restricted meaning. Moreover, even when viewed in isolation, the court’s statement does not naturally or necessarily convey a restrictive meaning. Indeed, defense counsel apparently did not

think the court had misstated or misunderstood the applicable standard because he did not object or otherwise seek clarification. However, when properly viewed *in context*, the statement cannot reasonably be read as a restrictive misstatement or misunderstanding of the court's discretion.

In their pleadings below, both parties cited *Williams* and correctly noted that the trial court had discretion to dismiss strikes if it found that Newton was outside the spirit of the law in whole *or in part*. Newton also cited the *Benson* dicta, in which the Supreme Court recognized that under appropriate circumstances, a court could, and perhaps should, dismiss some of a defendant's strikes. Newton also expressly urged the court to dismiss "one or both of his prior serious felony convictions." Those references to the proper standard are sufficient to demonstrate the court's awareness of its discretion, especially where, as here, the court stated that it had read and considered the briefs. (See, e.g., *People v. Padilla* (1995) 11 Cal.4th 891, 924, overruled on other grounds in *People v. Hill* (1998) 17 Cal.4th 800, 823, fn.1.) Furthermore, in the absence of evidence to the contrary, a reviewing court may presume that judicial duty is properly performed and, therefore, that the court knows and applies the correct statutory and case law. (*People v. Coddington* (2000) 23 Cal.4th 529, 644, overruled on another ground in *Price v. Superior Court* (2001) 25 Cal.4th 1046, 1069, fn. 13; *People v. Mack* (1986) 178 Cal.App.3d 1026, 1032; e.g., *People v. Nance* (1991) 1 Cal.App.4th 1453, 1456 [presuming the court knew and applied the correct standard of proof]; *People v. Myers* (1999) 69 Cal.App.4th 305, 310 [presuming court properly considered relevant factors].)

Under the circumstances, the court's comment does not reasonably imply that it misunderstood the scope of its discretion or applied an erroneously restrictive standard in declining to exercise its discretion. Nor does the record suggest that the court failed to consider whether Newton was outside the Three Strikes law, in whole or *in part*, or failed to consider the factors which Newton asserts could have supported a finding that he was partially outside the Three Strikes law—i.e., that he was 18 when he committed the strike

offenses, they were based on the same act, his subsequent criminal record is insignificant, and he led a law-abiding and productive life after his release from prison. Again, Newton expressly noted all of these factors below and argued that they supported the dismissal of one or more of his strikes. Moreover, before ruling, the court expressly acknowledged that Newton “appears to be a fine man,” his current offense was neither serious nor violent, and his strike offenses were remote and arose from the same incident.

Newton next notes that before ruling, the court stated that “unfortunately, this is exactly the type of situation that the three-strikes sentencing scheme was meant to address and to protect the community.” Quoting a ballot pamphlet argument in favor of the Three Strikes initiative measure (Proposition 184), Newton asserts that the sentencing scheme is “directed toward imprisonment of recidivist offenders who commit the most dangerous types of violent crimes.” Thus, from the court’s comment, Newton infers a mistaken belief that the Three Strikes law was designed for recidivist drunk drivers. He claims that as a result, the court ignored the fact that he has never committed a crime of violence.

Clearly, the court knew the nature of Newton’s current offenses, and, as noted, it expressly considered the fact that Newton’s strikes were not violent offenses. Furthermore, notwithstanding the emphasis in a ballot pamphlet argument on violent offenders, the purpose of the Three Strikes law is to enhance public safety and protection by providing increased punishment for current offenders who have previously committed violent or *serious* crimes and have therefore not been rehabilitated or deterred from further criminal activity as a result of their prior imprisonment. (*People v. Davis* (1997) 15 Cal.4th 1096, 1099; *People v. Gipson* (2004) 117 Cal.App.4th 1065, 1070; *People v. Leng* (1999) 71 Cal.App.4th 1, 14; see *Ewing v. California* (2003) 538 U.S. 11, 25 [“When the California Legislature enacted the three strikes law, it made a judgment that protecting the public safety requires incapacitating criminals who have already been convicted of at least one serious or violent crime.”].) Thus, where a defendant commits a

felony and has previously been convicted of one or more strike offenses, it is both accurate and fair to view the circumstances as “exactly the type of situation that the Three Strikes scheme was meant to address,” regardless of whether the defendant’s strikes were violent or, as here, serious offenses and where he or she falls in the hierarchy of recidivist offenders.

Continuing his effort to tease error from the trial court’s comments, Newton next notes its statement that although Newton appeared to be fine a man and has supportive friends and coworkers, “the case isn’t about whether the defendant is a good person or bad person.” According to Newton, the court misstated the law because in ruling on a *Romero* request, the court must consider “the particulars of his background, character, and prospects” (*Williams, supra*, 17 Cal.4th at p. 161.) Thus, Newton argues that the court abused its discretion in failing to give “meaningful consideration” to Newton’s character, background, and prospects.

Contrary to Newton’s strained interpretation, the court’s comment does not reflect a misunderstanding of the law. Simply put, the dismissal of a strike does *not* turn on whether a defendant is a “good or bad person.” Rather, as the court correctly stated, that determination is guided by “certain criteria that the court needs to look at in deciding the *Romero* motion.” In light of the parties’ briefing and argument, the court’s comments about Newton and his supporters and its reference to “criteria” reflect that it considered the positive aspects of his character, background, and prospects. The fact that it found those factors outweighed by the negative aspects of his character and other factors—i.e., his history of alcoholism; his prior offenses, which involved the death of one person and the serious injury of others; the striking similarity between those current offenses and the highly reckless and dangerous circumstances of his current offenses; the ease with which he relapsed after years of sobriety; and the broken promise of rehabilitation he made in the past and the identical promise he more recently gave the court—does not establish that the court failed to give those positive aspects “meaningful” consideration.

Last, Newton claims the court abused its discretion in failing to meaningfully consider the fact that his two prior strikes came out of a single criminal act. He argues that the court “ignored” the significance of the *Benson* footnote, quoted above (ante, pp. 4-5), and subsequent cases—*People v. Sanchez* (2001) 24 Cal.4th 983 (*Sanchez*) and *People v. Burgos* (2004) 117 Cal.App.4th 1209 (*Burgos*)—all of which, he asserts, indicate that “a trial court facing a *Romero* challenge based on a pair of strikes which arose not only out of the same incident, but from the identical criminal act, needs to carefully determine whether a proper exercise of discretion requires the dismissal of one of the two strike priors.” However, this claim is no more compelling than Newton’s other claims.

The court stated at the outset that it had read Newton’s brief, which cited and argued the *Benson* footnote. Moreover, the court expressly acknowledged that both of Newton’s strikes “arose out of a single incident” Thus, the record simply does not support Newton’s claim that the court ignored the *Benson* footnote and failed to meaningfully consider the fact that his strikes were based on the same conduct.

Furthermore, *Benson*, *Sanchez*, and *Burgos* do not convince us that the court abused its discretion.

In its footnote, the *Benson* court declined to decide whether there were any circumstances “in which two prior felony convictions are so closely connected—for example, when multiple convictions arise out of a single act by the defendant as distinguished from multiple acts committed in an indivisible course of conduct—that a trial court would abuse its discretion under section 1385 if it failed to strike one of the priors.” (*Benson*, *supra*, 18 Cal.4th at p. 36, fn. 8.) In *People v. Sanchez*, *supra*, 24 Cal.4th 983, the court revisited that footnote, observing that it “left open the possibility” that a court could abuse its discretion in failing to dismiss strikes based on offenses that were closely connected in their commission. (*Id.* at p. 993.)

In *People v. Burgos*, *supra*, 117 Cal.App.4th 1209, the court, citing *Benson* and *Sanchez*, held that the refusal to dismiss one of two strike convictions for attempted carjacking and attempted robbery, which were based on the same act, was an abuse of discretion. (*Id.* at p. 1216-1217.)

We point out that *Benson*, *Sanchez*, and *Burgos* involved multiple offenses arising from an act or conduct against a *single* victim, circumstances under which section 654 prohibits multiple punishment. However, as Newton candidly acknowledges, section 654 did not bar punishment for both of his prior strike offenses because his conduct resulted in multiple victims. (*People v. McFarland* (1989) 47 Cal.3d 798, 803; *People v. Ramirez* (1992) 6 Cal.App.4th 1762, 1765.) Nevertheless, Newton argues that the single-versus-multiple-victim distinction is irrelevant in determining whether to dismiss a strike. According to Newton, the sole relevant and controlling consideration is that his two strikes arose from the same act or conduct. We disagree with this view.

First, *Benson* and *Sanchez* do not suggest one way or the other whether a court would abuse its discretion in refusing to dismiss one of two strikes based on the same act or conduct. They simply left that question open. Moreover, those cases must be read in light of the facts before the court (*People v. Davis* (1998) 18 Cal.4th 712, 730); and since those cases involved single victims, they do not suggest that the single-versus-multiple-victim distinction is irrelevant. On the contrary, the reason that section 654 does not bar multiple punishment where a single act causes multiple victims is that a defendant who injures numerous victims is more culpable, and thus deserving of greater punishment, than the defendant who injures only one victim. (*People v. Oates* (2004) 32 Cal.4th 1048, 1065; *Neal v. State of California* (1960) 55 Cal.2d 11, 20.) This rationale has application in the *Romero* context because in exercising its discretion, the court must consider the nature of the prior convictions. Where prior convictions arose from a single act or course of conduct, the fact that there were multiple victims, rather than just one, is, in our view, highly relevant in deciding whether a dismissal is in furtherance of justice.

Burgos is distinguishable for yet another reason. It involved convictions for carjacking and robbery, and the court stated, “In the case of these particular offenses, not only did the two prior convictions arise from the same act, but, unlike perhaps any other two crimes, there exists an express statutory preclusion on sentencing for both offenses. Section 215, subdivision (c) permits the prosecution to charge a defendant with both carjacking and robbery under section 211, but expressly states that ‘no defendant may be punished under this section and Section 211 for the same act which constitutes a violation of both this section and Section 211.’ While this provision does not refer to the use of the convictions as priors in a later prosecution such as the one before us, it reinforces our belief that infliction of punishment in this case based on both convictions constitutes an abuse of discretion.” (*People v. Burgos, supra*, 117 Cal.App.4th at p. 1216.) In this case, no statute precludes punishment for both of Newton’s prior strike convictions.

Next, *Benson*, *Sanchez*, and *Burgos* do not suggest that where prior convictions arise from a single act that injured only one person that factor is controlling or automatically outweighs all other relevant factors, such as a defendant’s background, character, prospects, and the nature and circumstances of his current offense. Here, for instance, Newton had alcohol related offenses before his prior strike convictions. His strike offenses involved highly reckless driving under the influence and resulted in death and injury to his passengers. After those convictions, Newton promised the court he would not drink, let alone drink and drive. However, his probation was revoked, in part, because he failed to attend a drunk driving program. And, despite his ostensibly heartfelt promise, years of apparent sobriety, and steady employment, he relapsed and reverted to the same conduct that led to his prior conviction: he got extremely intoxicated, drove his car in a reckless and dangerous way, and crashed. Fortunately, this time, he had no passengers and did not hit anyone as he sped through city streets and onto the freeway to avoid being stopped by the police.

Under the circumstances, the trial court reasonably could find that Newton's history of alcohol-related offenses while driving, his prior strikes offenses, and his relapse outweighed the evidence of his good character and years of lawful sober conduct and employment and the fact that his priors arose from the same conduct. The court further could reasonably find that, as a recidivist serious offender, Newton posed the sort of potential danger and harm that lengthy Three Strikes sentences were designed to protect the public against.

Defendant bears the burden of demonstrating that the trial court abused its discretion. "It is not enough to show that reasonable people might disagree about whether to strike one or more of his prior convictions. Where the record demonstrates that the trial court balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court's ruling, even if we might have ruled differently in the first instance." (*People v. Myers* (1999) 69 Cal.App.4th at 305, 309-310; accord, *People v. Carmony*, *supra*, 33 Cal.4th at p. 376.)

Here, Newton has not shown that the court misunderstood the scope of its discretion, failed to properly consider all of the factors relevant to its determination, or abused its discretion. Moreover, the record does not compel a finding that court's ruling was was arbitrary, irrational, or unreasonable.

VI. DISPOSITION

The judgment is affirmed.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.